

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
CENTRAL SECTION  
WORCESTER

FILED  
CLERK OF COURT  
OCT 29 2004  
11:57  
WORCESTER

LEIGH M. OLSEN,	]	
	]	
PETITIONER,	]	HABEAS CORPUS
	]	ACTION NUMBER
VS.	]	4:04-cv-40178-FDS
	]	
STEVEN O'BRIEN,	]	OCTOBER 26, 2004
SUPT. NCCI,	]	
	]	
KATHERINE DENNEHY,	]	
COMMISSIONER,	]	
MASS DEPT OF CORRECTION,	]	
	]	
RESPONDENTS.	]	
	]	

PETITIONER'S MOTION AGAINST  
SUMMARY JUDGMENT NOT GIVING TEN  
DAYS ADVANCE NOTICE AS U.S. COURT  
OF APPEALS MANDATED IN §2254 CASES

Now comes LEIGH M. OLSEN, Petitioner, Pro Se,  
and moves this Honorable Court to [r]eject its MEMORAN-  
DUM AND ORDER issued (unauthenticated by the Clerk  
of Court TITLE 1, USCS §114; TITLE 28 USCS §1691),  
where in the Court issued summary judgment without  
prejudice, dismissing the FEDERAL HABEAS CORPUS CLAIMS,  
prematurely and in violation of the laws established  
by the UNITED STATES COURT OF APPEALS, ruling against  
ad hoc ex parte dismissals of a petitioner's habeas  
corpus.

READ:

JONES v. ESTELLE 692 F. 2d 380 (1982)

At page 384:

"FAILURE TO GIVE HABEAS (CORPUS) PETITIONER  
TEN (10) DAYS NOTICE PREVENTS ENTRY OF  
SUMMARY JUDGMENT AGAINST PETITIONER. . ."  
(emphasis added)

THE SUPREME COURT OF THE UNITED STATES

HOWLETT BY AND THROUGH HOWLETT v. ROSE  
110 S. Ct. 2430 (1990)

At page 2432:

"(b) Under the SUPREMACY CLAUSE . . . such a court  
MAY NOT A FEDERAL RIGHT, WHEN THE PARTIES AND CON-  
TROVERSY ARE PROPERLY BEFORE IT, IN THE ABSENCE OF  
A "VALID EXCUSE".

"An excuse THAT IS INCONSISTENT WITH OR VIOLATES  
FEDERAL LAW IS NOT A VALID EXCUSE . . ."  
(emphasis added)

POWELL v. LIVESAY  
660 F. SUPP. 82 (N.D. TENN. 1987)

"\* \* \* TO HOLD THAT A PETITIONER IS STILL PRECLUDED  
FROM PURSUING HIS REMEDY IN FEDERAL COURT REDUCED  
THE GREAT WRIT TO A SHAM AND MOCKERY. . . . AN INORDI-  
NATE AND UNJUSTIFIED DELAY . . . BE SUCH A CIRCUMSTANCE  
AS TO RENDER THAT (HABEAS CORPUS) PROCESS INEFFECTIVE."  
(emphasis added)


ATKINS v. SINGLETARY  
965 F. 2d 952 (11th Cir. 1992)

At page 958:

"A petitioner [IS] ENTITLED TO AN EVIDENTIARY HEARING  
IF HE ALLEGES FACTS WHICH, IF TRUE, WOULD WARRANT  
HABEAS CORPUS RELIEF." And we MUST ACCEPT AS TRUE  
THE FACTUAL ASSERTIONS MADE BY A HABEAS PETITIONER  
. . ."

OCTOBER 26, 2004

Respectfully submitted,

  
LEIGH M. OLSEN

Petitioner Pro Se  
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